IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04 .2007

CORAM:

THE HONOURABLE MR.JUSTICE S.TAMILVANAN

Criminal R.C. Nos.1919 of 2004
and 2066 of 2004

Crl.R.C.No.1919 of 2004

B.Radhakrishnan .. Petitioner

Vs.

State rep. by
Sub-Inspector of Police
W-1, All Women Police Station,
Thousand Lights,
Chennai - 600 006. .. Respondent

Crl.R.C.No.2066 of 2004

Tmt. Tamilselvi .. Petitioner

Vs.

1. Boopathy
2. Jayalakshmi
3. Arul
4. State rep. by
Sub-Inspector of Police
W-1, All Women Police Station,
Thousand Lights,
Chennai - 600 006. .. Respondents

Crl.R.C.No.1919 of 2004 : Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C, against the judgment, dated 04.11.2004, made in C.A.No.214 of 2000, on the file of the III Additional Sessions Judge, Chennai, confirming the judgement, dated 17.08.2000, made in C.C.No.5208 of 1998 on the file of the Chief Metropolitan Magistrate, Chennai.

Crl.R.C.No.2066 of 2004 : Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C, against the judgment, dated 04.11.2004, made in C.A.No.214 of 2000, on the file of the III Additional Sessions Judge, Chennai, modifying the judgement,

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dated 17.08.200, made in C.C.No.5208 of 1998 on the file of the Chief Metropolitan Magistrate, Chennai.

For petitioner : Mr.J.I.Rajkumar Roberts in Crl.R.C.No.1919/04
Mr.R.John Sathyan for Mr.Mohamed Ehiya
in Crl.R.C.No.2066 of 2004

For respondents : Mr.Hasan Mohammed Jinnah
Govt. Advocate (crl. side) in Crl.R.C.No.1919/04
and for R4 in Crl.R.C.No.2066/04
Mr.J.I.Rajkumar Roberts for R1 to R3.

O R D E R

Crl.R.C.No.1919 of 2004 is preferred by the revision petitioner / A1 against the judgment, dated 04.11.2004 recorded in C.A.No.214 of 2004 on the file of the III Additional Sessions Judge, Chennai, confirming the conviction and sentence, imposed on A1 in C.C.No.5208 of 2004, on the file of the Chief Metropolitan Magistrate, Egmore, Chennai.

2. Crl.R.C.No.2066 of 2004 has been preferred by the defacto complainant against the judgment made in C.A.No.214 of 2004, on the file of the III Additional Sessions Judge, Chennai, reversing the conviction and sentence of the trial court, made in C.C.No.5208 of 2004, on the file of the Chief Metropolitan Magistrate, Egmore, Chennai, so far it relates to the acquittal of A2 to A4.

3. For the purpose of convenience, the parties in both Criminal Revisions are referred to as stated before the trial court in C.C.No.5208 of 1998.

4. It is not in dispute that Tamilselvi, the revision petitioner in Crl.R.C.No.2066 of 2004, the defacto complainant, who was also examined as P.W.1 in C.C.No.5208 of 2004, on the file of the Chief Metropolitan Magistrate, Egmore, Chennai. She is the wife of Radhakrishnan, the revision petitioner in Crl.R.C.No.1919 of 2004, who was arrayed as A1 before the trial court and respondents 1, 2 and 3, herein, namely, Bhoopathi, Jayalakshmi and Arul respectively are father-in-law, mother-in-law, and brother-in-law of the defacto complainant, who were arrayed as A2 to A4 before the trial court in the said criminal case. The marriage between Radhakrishnan / A1 and the defacto complainant Tamilselvi / P.W.1 had taken place on 26.08.1994 and after the marriage, since the defacto complainant, being an advocate, practicing along with her father, P.W.2, at Chennai, she was living along with her husband / A1 in her father's residence at No.86/1, Ramamoorthy Colony, TVK Nagar, Chennai and they used to visit Kuthambakkam, Vellavedu, Poonamalle were A2

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to A4 were living.

5. According to the defacto complainant / P.W.1, during the period between September 1994 and August 1997 at various places in different occasions, the defacto complainant / P.W.1, was subjected to cruelty and harassment by the revision petitioner / A1, by way of demanding dowry in the form of money, motor cycle, jewellery. According to her, he demanded Rs.4,50,000/- at the instigation of A2 to A4 for constructing a house at Kuthambakkam. She has further stated that the revision petitioner / A1 frequently used to beat her and cause cruelty on the defacto complainant and finally deserted her by causing her mental agony. During the said period, A2 to A4 were also demanding dowry of Rs.5,00,000/- from the father of the defacto complainant, for constructing house for A1, and as per the charge framed by the trial court, the revision petitioner / A1 has committed offence punishable under Section 498 A IPC and Section 4 of Dowry Prohibition Act and A2 to A4 have committed offence punishable under Section 4 of Dowry Prohibition Act.

6. Considering the oral and documentary evidence and also the arguments advanced by both sides, learned Chief Metropolitan Magistrate, held that the revision petitioner / A1 was guilty under Section 498 A and Section 4 of the Dowry Prohibition Act and A2 to A4 guilty under Section 4 of Dowry Prohibition Act and accordingly, sentenced each of them to undergo one year RI and to pay a fine of Rs.500/- each with default sentence, in addition to that the revision petitioner / A1 was convicted and sentenced to undergo one year RI and to pay a fine of Rs.500/- with default sentence, under Section 498 A IPC. It was further ordered that the sentence awarded to the revision petitioner / A1 to run concurrently.

7. Against the conviction and sentenced, imposed by the learned Chief Metropolitan Magistrate in C.C.No.5208 of 2004, appeal was preferred by the accused 1 to 4 in C.A.No.214 of 2000, before the III Additional Sessions Judge, Chennai. The appellate court, has confirmed the conviction and sentence, so far as it relates to revision petitioner / A1 is concerned. By allowing the appeal preferred by A2 to A4, the appellate court has set aside the conviction and sentence, imposed on A2 to A4, by its judgment, holding that the charges levelled against them have not been proved beyond reasonable doubt. Against the said conviction and sentence revision petitioner / A1 has preferred revision in Crl.R.C.No.1919 of 2004. Aggrieved by the acquittal recorded in favour of A2 to A4 by the appellate court, the defacto complainant / P.W.1, has preferred revision in Crl.R.C.No.2066 of 2004. Hence, both the Criminal Revisions are arising out of the same judgment, made in the appeal in Crl.A.No.214 of 2004, dated 04.11.2004, rendered by the III Additional Sessions Judge, Chennai.

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8. The Hon'ble Supreme Court in various decisions has clearly laid down the scope of criminal revision preferred before this Court and it is not in dispute that in the criminal revision preferred under Section 397 r/w 401 of the Code of Criminal Procedure, this Court cannot assume the power as an appellate court. The interference of this Court is warranted only, if there is any manifest error of law or perverse finding, that would lead to miscarriage of justice.

9. So far as the revision petitioner / A1 is concerned, it is seen that there is a concurrent finding by both the courts below and the respondents 1 to 3 / A2 to A4 are concerned, it is seen that though the trial court found them guilty and convicted under Section 4 of Dowry Prohibition Act, in the appeal, the appellate court has held that the guilt against A2 to A4 has not been proved beyond reasonable doubt and by giving benefit of doubt, the finding of the trial court was reversed by the appellate court, so far as the judgment relating to A2 to A4 are concerned, and accordingly, the conviction and sentence imposed on the said accused were set aside by the first appellate court.

10. The revision in Crl.R.C.No.2066 of 2004 has been preferred by the defacto complainant / P.W.1 against the judgment of acquittal. So far as A2 to A4 are concerned, there is no concurrent finding by the courts below. As it is a revision against acquittal, unless there is manifest error of law or perverse finding, leading to miscarriage of justice, this Court cannot interfere with the said judgment in the revision preferred by the defacto complainant / P.W.1 against the acquittal.

11. Learned counsel for the revision petitioner / A1 has cited the following decisions :

1. 1 (2007) DMC 143 (SC), Appasaheb v. State of Maharashtra
2. 1996 (3) Crimes 35 (SC), S.Gopal Reddy v. State of Andhra Pradesh
3. 1 (2004) DMC 354 (SC), Ashok Vishnu Davare v. State of Maharashtra
4. 1 (2004) DMC 360 (SC), Anupam Pathak v. State of Jharkhand

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12. In the decision Appasaheb v. State of Maharashtra, reported in 1 (2007) DMC 143, the Hon'ble Supreme Court has held as follows :

> " 9...A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is

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> 7normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 304B, IPC viz, demand of dowry is not established, the conviction of the appellants cannot be sustained."

I am of the considered view that the aforesaid ruling is not applicable for the facts and circumstances of this case, since, the evidence of P.W.1 to P.W.5 in this case, would establish the fact that the revision petitioner / A1 was harassing the defacto complainant / P.W.1 by demanding dowry at the residence, as well as at the Advocates Association in the High Court campus, where she was practising as advocate and due to the same, she had given a complaint, Ex.P.2, even while she was a pregnant woman. Subsequently, she gave the complaint, Ex.P.1,dated 11.12.1997 before the Commissioner of Police, Egmore, Chennai- 8.

13. In the decision, Jagannath Choudhary v. Ramayan Singh, reported in 2002 SCC (Cri) 1181, the Hon'ble Apex Court has held that the object of revisional jurisdiction as envisaged under Section 401 is to confer upon superior criminal courts a kind of paternal or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions or apparent harshness of treatment which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand in some undeserved hardship to individuals. The main question which the High Court has to consider in an application in revision is whether substantial justice has been done. If however, the same has been an appeal, the applicant would be entitled to demand an adjudication upon all questions of fact or law which he wished to raise, but in revision, the only question is whether the court should interfere in the interests of justice. Where the court concerned does not appear to have committed any illegality or material irregularity or impropriety in passing the impugned judgment and order, the revision cannot succeed.

14. In the decision, Deb Narayan Halder v. Anushree Halder (Smt), reported in 2004 SCC (Cri) 164, the Hon'ble Apex court has held that in a revision, as per Section 401 of the Code of Criminal Procedure, 1973, findings of fact of the trial court cannot be reversed.

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15. In the decision T.N.Dhakkal v. James Basnett and another, reported in 2002 SCC (Cri) 1066, the Hon'ble Apex Court has held as follows :

> " 11... The trial court was, thus, justified on the basis of the material before it, to record an acquittal. The High Court in its order did not find the order of the trial court to be suffering from any perversity or not find the order of the trial court to be suffering from any perversity or unreasonableness. Under the circumstances, the High Court ought not to have interfered with the order of acquittal and ordered a retrial for the purpose of examining the two victims under Section 540 Cr.P.C, even though their statements had not been recorded under Section 161 Cr.P.C by the investigating officer to fill in the lacuna in the prosecution case. In this connection, it also deserves to be mentioned that in the counter affidavit filed by the State of Sikkim before this Court on 11.08.1991, ti has been specifically asserted that : "The State did not file an appeal against the order of acquittal, because the acquittal is unassailable." Therefore, the interference by the High Court, in the established facts and circumstances of the case, in a revision petition filed by a third party, with the order of acquittal was not justified."

16. In the light of the rulings of the Hon'ble Supreme Court, referred above, it is clear that in a criminal revision, this Court cannot assume the jurisdiction of the appellate court, by way of appraising the evidence and unless there is patent illegality or material irregularity or impropriety in the impugned judgment or order, this Court cannot interfere with the same, while deciding criminal revision.

17. In the instant case, as per the evidence of P.W.1, defacto complainant, on the demand of the revision petitioner / A1, Rs.44,000/- was given on 29.05.1996 in the presence of A2 to A4, by the parents of the defacto complainant / P.W.1, for purchasing Hero Honda Motor Cycle and he further demanded a sum of rs.4,50,000/- on 06.09.1996 for constructing a house and as the request was not considered by the parents of P.W.1, on 28.04.1997, the revision petitioner / A1 went to the High Court Advocates Association, Chennai, during lunch hour and asked the Thali chain (Mangalsutra) of P.W.1 to be returned to him, even

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without considering the fact that she was pregnant. and on the same date, the first accused again went to the locker room situated at the High Court Advocates Association and threatened her to kill P.W.1 and her father P.W.2. As found by the courts below, the same has been established by the evidence of P.W.1, P.W.2 and P.W.4, an independent witness. According to the defacto complainant / P.W.1 and the findings of the court below, the revision petitioner / A1 had gone to the house of P.W.2 and locked P.W.1 in the first floor of the house and also beaten her on the day. It is seen that the defacto complainant preferred a written complaint, Ex.P.1, dated 11.12.1997, enclosing her previous complaint, dated 18.08.1997 with English version, which was marked as Ex.P.2. Based on the complaint, Ex.P.1, on 04.02.1998, the case was registered by police.

18. According to Mr. J.I.Rajkumar Roberts, the learned counsel for the revision petitioner / A1, after the complaint, Ex.P.1, the defacto complainant / P.W.1 could have made arrangement to insert the detailed English version, available with Ex.P.2, as it contains no seal and hence, the same cannot be relied upon.

19. Per contra, Mr.R.John Sathyan, learned counsel for the defacto complainant / P.W.1 contended that Ex.P.1, complaint typed in tamil, dated 11.12.1997 had been given by the defacto complainant / P.W.1, to the Commissioner of Police, Chennai - 8, since no action was taken on her earlier complaint, Ex.P.2, dated 18.08.1997, given to the Inspector of Police, Dowry Prohibition Section, Thousand Light, Chennai, and the English version of the detailed complaint was given before the said Inspector of Police on the same date along with Ex.P.2 and the same was marked as part of Ex.P.2 before the trial court. According to him, now it is not open to the revision petitioner / A1 to raise the same as a defence in the revision.

20. It is seen in Ex.P.2, dated 18.08.1997 that the defacto complainant / P.W.1 has stated that the revision petitioner / A1, at the instigation of the accused A2 to A4 was causing dowry harassment on her, by demanding money and jewels and motor cycle and also caused mental agony. According to the defacto complainant / P.W.1, the revision petitioner / A1, even by coming to the Advocates Association, he asked for return of her Thali Chain (Mangalsutra), while she was pregnant, without realising that such harassment would affect the health of herself and the child in the womb. Since the revision petitioner / A1 use to threaten the defacto complainant, both at her residence as well as in the court campus, hence, she lodged Ex.P.2, Complaint with the Inspector, All Women Police Station, Thousand Light, Chennai, seeking suitable action against the revision petitioner / A1. In the complaint, Ex.P.1, dated 11.12.1997, given by her to the Commissioner of Police, she has

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referred the previous complaint, Ex.P.2, dated 19.08.1997, as well as the case number registered by the All Women Police Station, Thousand Light, Chennai, wherein she has stated that the marriage between herself and the revision petitioner / A1 was performed on 26.08.1994 at Perambur, Chennai, for the said marriage, her father had spent Rs.3,00,000/- towards marriage expenses, apart from providing 30 sovereigns of jewels to her and 3 sovereigns gold chain and one sovereign gold ring to the revision petitioner / A1, apart from house hold articles like Cot, Bero etc worth Rs.50,000/- and on his demand, her father subsequently, spent Rs.44,000/- to purchase Hero Honda Motor Cycle for the revision petitioner / A1. Further, he was demanding Rs.5,00,000/- at the instance of A2 to A4 for constructing a house, as provided to his elder brother A4, by his father-in-law. She has further stated that the revision petitioner / A1 use to beat and harass her by demanding dowry. The evidence of defacto complainant / P.W.1 has been corroborated by P.W.2 and other prosecution witnesses and also accepted by both the courts below.

21. The trial court, considering the oral and documentary evidence adduced by both sides, held that the guilt against the revision petitioner / A1 and A2 to A4 have been proved beyond reasonable doubt and convicted all the said accused. The appellate court has held that the guilt against the revision petitioner / A1 has been proved and accordingly, the conviction and sentence imposed on the revision petitioner / A1 was confirmed by the appellate court. As A2 to A4 were residing in the native place Kuthambakkam Village, Vellavedu, considering the circumstances, benefit of doubt was given to A2 to A4 by the appellate court and the appeal preferred by them was allowed, and A2 to A4 were all acquitted in the appeal.

22. As found by court below, merely because the English version attached to Ex.P.2 did not have the seal, it cannot be said in the revision, that it was subsequently inserted by the defacto complainant / P.W.1 with the help of Police. It is seen that the defacto complainant / P.W.1 has clearly stated about the dowry harassment met out by her at the hands of the revision petitioner / A1. It is not in dispute that she was pregnant, while complaint, Ex.P.2, dated 18.08.1997 was given before the Inspector of Police. She gave the complaint, Ex.P.1, dated 11.12.1997 before the Commissioner of Police, Chennai, where in she has referred her earlier complaint, Ex.P.2 and also the case number registered on the file of the All Women Police Station. She has further stated that in spite of her complaint, no action was taken against the revision petitioner / A1 by the Inspector, All Women Police Station.

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23. As held by the courts below, the English version of the complaint, dated 18.08.1997 attached to Ex.P.2 cannot be construed as a subsequent insertion. Even as per Ex.P.1 & Ex.P.2, complaints, ignoring the English version, case has been made out to attract Section 498A IPC and Section 4 of Dowry Prohibition Act. As found by the courts below, I am of the considered view that the prosecution has established the case against the revision petitioner / A1 by oral and documentary evidence. Though the revision petitioner / A1 produced the receipt for purchase of Hero Honda Motor Cycle in his name, there is no evidence to show that the same was purchased by him out of his own funds. I could find no manifest error of law or perverse finding in the judgments rendered by the courts below, since the finding is based on oral and documentary evidence available on record.

24. In the light of the decisions of the Hon'ble Apex Court referred above, I am of the considered view that there is no manifest error or illegality or perverse finding, which would lead to miscarriage of justice, so as to warrant the interference of this Court in the Criminal Revision. Similarly, I could find no infirmity in the judgment rendered by the appellate court in giving benefit of doubt to the respondents / A2 to A4 and allowing the appeal, so far as it relates to them and setting aside the conviction and sentence, imposed on the aforesaid respondents / accused.

25. Therefore, I am of the considered view that the impugned judgment rendered by the court below in Crl.A.No.214 of 2004, dated 04.11.2004 is legally sustainable and accordingly, both the Crl.R.C.No.1919 of 2004 and Crl.R.C.No.2066 of 2004 are liable to be dismissed.

26. In the result Crl.R.C.No.1919 of 2004 and Crl.R.C.No.2066 of 2004 are dismissed. As the revision petitioner / A1 is on bail, the trial court shall take immediate steps to secure the revision petitioner / A1, to undergo the balance period of the sentence imposed on him.

Tsvn

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To
1. The III Additional Sessions Judge
Chennai.

2. - DO - Thro The Principal Sessions Judege, Chennai

3. The Chief Metropolitan Magistrate
Chennai.

4. The Public Prosecutor, High Court, Madras

5. The Superintendent central Prison, Vellore

6. The Sub-Inspector of Police
W-1, All Women Police Station,
Thousand Lights,
Chennai - 600 006.

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